

PIERCE BAINBRIDGE BECK PRICE & HECHT LLP

Brian J. Dunne (CA Bar No. 275689)

bdunne@piercebainbridge.com

Theodore J. Folkman (*Pro Hac Vice* Pending)

tfolkman@piercebainbridge.com

Dwayne D. Sam (*Pro Hac Vice* Pending)

dsam@piercebainbridge.com

355 South Grand Ave., 44th Floor

Los Angeles, California 90071

(213) 246-2411

Attorneys For Applicants

ZYXEL COMMUNICATIONS UK LIMITED

and ZYXEL COMMUNICATIONS A/S

FILED

JUL -5 2019

SUSAN Y. SOONG *dh*
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re APPLICATION OF ZYXEL
COMMUNICATIONS UK LIMITED and
ZYXEL COMMUNICATIONS A/S FOR AN
ORDER PURSUANT TO 28 U.S.C. § 1782
GRANTING LEAVE TO OBTAIN
DISCOVERY FROM BROADCOM INC.
and BROADCOM CORP. FOR USE IN
FOREIGN PROCEEDINGS

CV 19 80 175 MISC
Civ. A. No.

SVK

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that applicants ZyXEL Communications UK Limited and ZyXEL Communications A/S, (together, "ZyXEL") hereby make an *ex parte* application for an order pursuant to 28 U.S.C. § 1782 granting leave to obtain discovery from Broadcom Inc. and Broadcom Corp. (collectively, "Broadcom") for use in foreign proceedings. ZyXEL seeks leave to serve subpoenas on Broadcom for testimony and documents for use in a foreign proceeding pending in the United Kingdom. ZyXEL sells and distributes networking devices used to connect people to the internet, including Digital Subscriber Line ("DSL") products. TQ Delta LLC has brought patent infringement actions in the High Court of Justice of England and Wales

BY FAX

1 against ZyXEL regarding EP (UK) 1 792 430 B9 (“the ‘430 Patent”), EP (UK) 1 453 268 B1
 2 (“the ‘268 Patent”), EP (UK) 2,270,996 (“the ‘996 Patent”), and EP (UK) 1,433,277 (“the ‘277
 3 Patent”). The English court held that the ‘430 Patent was invalid, but it found that the ‘268
 4 Patent was valid and that ZyXEL infringed it. Claims against ZyXEL regarding the ‘996 and
 5 ‘277 Patents are pending. Non-technical issues related to the licensing of a patent portfolio
 6 owned by TQ Delta will be adjudicated at a trial scheduled to take place in England from
 7 September 13–27, 2019 (the “RAND trial”). In this application, ZyXEL seeks evidence from
 8 Broadcom for use in the UK at the RAND trial. Broadcom is a leading manufacturer of DSL
 9 chipset products, and some ZyXEL DSL products use Broadcom chipsets.
 10
 11

12 As set forth more fully in the accompanying Memorandum, and the Declaration of Mark
 13 Marfé, ZyXEL has satisfied the statutory prerequisites for application of § 1782, and the
 14 discretionary factors favor granting the application. Accordingly, ZyXEL respectfully requests
 15 that the Court grant this *ex parte* application and authorize issuance of the subpoenas.
 16

17 ZyXEL submits a proposed order attached as Exhibit 1, and proposed subpoenas attached
 18 as Exhibits 2 and 3 respectively.
 19

20 **JURISDICTIONAL STATEMENT**

21 **Jurisdiction:** Pursuant to Local Rule 3-5(a), this Court has jurisdiction over this matter
 22 pursuant to 28 U.S.C. § 1782.

23 **Intradistrict Assignment:** Pursuant to Local Rule 3-5(b) this matter is properly brought
 24 in the San Jose Division because Broadcom’s principal place of business is in San Jose,
 25 California.
 26

27 Dated: July 3, 2019

28 Respectfully submitted,

1 ZyXEL Communications UK Limited and
2 ZyXEL Communications A/S ILLUMINA.

3 By its attorneys:

4 /s/ Brian J. Dunne
5 Brian J. Dunne (CA Bar No. 275689)
6 PIERCE BAINBRIDGE BECK PRICE &
7 HECHT, LLP
8 355 S. Grand Ave., 44th Floor
9 Los Angeles, CA 90071
10 (213) 246-2411
11 bdunne@piercebainbridge.com

12 Theodore J. Folkman (*pro hac vice* pending)
13 PIERCE BAINBRIDGE BECK PRICE &
14 HECHT, LLP
15 One Liberty Square
16 Boston, MA 02109
17 (617) 313-7401
18 tfolkman@piercebainbridge.com

19 Dwayne D. Sam (*pro hac vice* pending)
20 PIERCE BAINBRIDGE BECK PRICE &
21 HECHT, LLP
22 601 Pennsylvania Ave., NW
23 South Tower, Suite 700
24 Washington, DC 20004
25 (202) 843-8342
26 dsam@piercebainbridge.com
27
28